



Department of Energy
Washington, DC 20585

JUNE 10, 2019

BY ELECTRONIC MAIL

Emma Best
MuckRock News
53571-80384283@requests.muckrock.com

Re: Case No. FIA-19-0018
Request No. HQ-2019-00261-F

Dear Ms. Best:

This letter concerns the Freedom of Information Act appeal (Appeal) that you filed with the Department of Energy's (DOE) Office of Hearings and Appeals (OHA) on May 31, 2019. In your Appeal, which concerned your request to DOE's Office of Public Information (OPI) for a copy of the data in the DOE Global Energy Storage Database, you challenged "the integrity of the response by OPI in its entirety." Appeal at 1. As explained below, OHA lacks jurisdiction to address the issues raised in your submission.

DOE's FOIA regulations state that OHA has jurisdiction to consider FOIA appeals in the following circumstances:

When the Authorizing or Denying Official or FOIA Officer has denied a request for records in whole or in part or has responded that there are no documents responsive to the request . . . or when the FOIA Officer has denied a request for expedited processing . . . or for waiver of fees

10 C.F.R. § 1004.8(a).

In this case, the circumstances for an administrative appeal do not yet exist because, as of the date of your Appeal, DOE had not yet denied a request for records in whole or in part, responded that there are no documents responsive to the request, or denied a request for waiver of fees. Rather, the last communication from OPI that you provided with your Appeal, dated March 11, 2019, indicated that OPI was prepared to provide you with further assistance in obtaining the records that you requested and did not contain any of the indicia of a determination under 10 C.F.R. § 1004.7. Accordingly, your Appeal, designated OHA case number FIA-19-0018, is dismissed.

For further information on the processing of your FOIA request, you may contact Alexander Morris, Esq., at Alexander.Morris@hq.doe.gov. OPI has informed us that it will be issuing you a determination letter regarding your request shortly. After you receive a determination letter from OPI, you may file another appeal with OHA if you are not satisfied with that determination.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: www.archives.gov/ogis
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

If you have any questions concerning this letter, please contact Phillip Harmonick, Attorney-Advisor, at the Office of Hearings and Appeals, by electronic mail message at Phillip.Harmonick@hq.doe.gov or by telephone at (202) 287-1594.

Sincerely,

A handwritten signature in blue ink that reads "Richard A. Cronin Jr." with a stylized flourish at the end.

Richard A. Cronin, Jr.
Chief
Employee Protections and Exceptions Division
Office of Hearings and Appeals

Enclosure

cc: Alexander Morris
FOIA Officer
Office of Information Resources